

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHINIKKA HICKS and	:	
KIERRA CALLAWAY,	:	
Plaintiffs,	:	Civil Action File No. 1:22-cv-
	:	02189-ELR
	:	
vs.	:	
	:	
1715 NORTHSIDE DRIVE,	:	
INC.; A-1 ENTERTAINMENT,	:	
LLC; VERONICA	:	
ENTERPRISES, INC.; 1271	:	
MARIETTA BLVD., LLC;	:	
CARMEN POPOVITCH;	:	
ALEXANDER “VIC”	:	
POPOVITCH; and BRIANIA	:	
JANAE SIMMONS a/k/a	:	
“Blondee.”	:	
Defendants	:	
	:	

**PLAINTIFFS’ MOTION FOR EXTENSION
OF TIME TO SERVE DEFENDANTS**

Plaintiffs move for an extension of time to complete service of process in this wage and hour case for sixty (60) days through and including October 30, 2022, and in support thereof, show this Court as follows:

1.

Plaintiffs filed his Complaint [Dkt. 1] on June 2, 2022 alleging violations of the Fair Labor Standards Act of 1938 (as amended) (29 U.S.C. § 201 *et seq*).

2.

Fed. R. Civ. P. 4(m) requires that a plaintiff serve a defendant with process within 90 days of the filing of a complaint.

3.

Ninety days from June 2, 2022 is August 31, 2022.

4.

On June 2, 2022, Counsel retained the services of Wiley D. Handley, a process server to effect service upon Defendants. See Declarations of Wiley D. Handley and Matthew W. Herrington (hereafter, “Handley Decl.” ¶ 4 and “Herrington Decl.” ¶ 4)

5.

Mr. Handley is an experienced process server who has successfully served process for counsel in dozens of cases over the past several years. (Handley Decl. ¶¶ 3 and 5)

6.

The Georgia Secretary of State’s website contains an entry for 1715 Northside Drive, Inc. showing that the corporation’s registered agent is Defendant Carmen Popovitch. (Handley Decl. ¶ 6 and Exhibit “A”)

7.

The Georgia Secretary of State's website contains an entry for 1271 Marietta Blvd., LLC showing that the corporation's registered agent is Defendant Carmen Popovitch. (Handley Decl. ¶ 7 and Exhibit "B")

8.

The Georgia Secretary of State's website contains an entry for A-1 Entertainment, LLC showing that the corporation's registered agent is Defendant Carmen Popovitch. (Handley Decl. ¶ 8 and Exhibit "C")

9.

The Georgia Secretary of State's website contains an entry for Veronica Enterprises, Inc. showing that the corporation's registered agent is Defendant Carmen Popovitch. (Handley Decl. ¶9 and Exhibit "D")

10.

The Secretary's website further shows that the registered agent's address is 1715 Northside Drive, NW, Atlanta, Georgia 30318 for both 1715 Northside Drive, Inc. and A-1 Entertainment, LLC. (Exhibits "A" and "C")

11.

The Secretary's website shows that the registered agent's address is 1271 Marietta Blvd., NW, Atlanta, Georgia 30318 for both Veronica Enterprises, Inc. and

1271 Marietta Blvd., LLC, which is believed to be Defendant Carmen Popovitch's home address. (Exhibits "B" and "D")

12.

Through a LexisNexis background search, Counsel obtained a residential address for Defendant Carmen Popovitch of 1586 Peachtree Battle Ave., NW, Atlanta, GA 30327 and provide that information to Mr. Handley. (Handley Decl. ¶10)

13.

On June 6, 2022, Mr. Handley attempted to serve Ms. Popovitch and, through her, the four corporate Defendants at Ms. Popovitch's residence at 1586 Peachtree Battle Ave., NW, Atlanta, GA 30327. (Handley Decl. ¶11)

14.

Mr. Handley made contact with Ms. Popovitch and communicated with her through a door, but she refused to open the door. Mr. Handley advised her at that time that he was there to serve process. Mr. Handley asked several times if she was Carmen Popovitch and she acknowledged that she was. However, Ms. Popovitch would not open the door to receive the documents thereby willfully frustrating the delivery of lawful service of process. (Handley Decl. ¶¶ 12-20 Herrington Decl. ¶ 5-8)

15.

On August 25, 2022, pursuant to O.C.G.A. § 9-11-4(e)(1) as incorporated in the Rule 4 of the Fed. R. Civ. P., undersigned Counsel sent packages to the Georgia Secretary of State via Certified Mail to accept service on behalf of corporate Defendants 1715 Northside Drive, Inc., A-1 Entertainment, LLC, Veronica Enterprises, Inc. and 1271 Marietta Blvd., LLC. See Exhibit “E” attached hereto.

16.

In addition, on August 25, 2022, counsel sent packages to Defendants 1715 Northside Drive, Inc., A-1 Entertainment, LLC, Veronica Enterprises, Inc. and 1271 Marietta Blvd., LLC addressed to registered agent, Carmen Popovitch via Federal Express overnight mail containing the Summons, Complaint, and Certifications of undersigned counsel Charles R. Bridgers. Those packages were delivered. See Exhibit “F” attached hereto.

17.

Counsel is currently awaiting confirmation of service from the Georgia Secretary of State. It has been counsel’s experience that this process usually takes several weeks and should be completed within the sixty (60) day extension period.

Argument and Citation of Authority

Fed. R. Civ. P. 4(m) requires that service must be perfected within 90 days

from the filing of a complaint. The Rule also provides that “the court must extend the time for service for an appropriate period” if the “plaintiff shows good cause for the failure”. Even if good cause is not shown, the District Court retains the discretion to direct that service be made within a specified time period. See, *Parker v. Scheck Mechanical Corp.* 772 F.3d 502, 506 (7th Cir. 2014) See also Fed. R. Civ. P. 6(b) (extension of time for good cause shown).

Plaintiffs file this request within the original time frame for serving Defendants. Plaintiffs have made diligent efforts to effect service on Defendants, *i.e.* attempt by Mr. Handley wherein the registered agent refused to accept service of process on the corporate Defendants, Counsel’s transmission of the Summons and Complaint to Defendants via Federal Express, and Counsel’s transmission to the Georgia Secretary of State.

Plaintiffs have thus demonstrated good cause for extending the time for service in this instance. Defendants will suffer no prejudice based on this delay.

Conclusion

For the above stated reasons, Plaintiffs pray that the Court grant their motion to extend the time to serve Defendants with process by 60 days, to October 30, 2022. This time frame should be more than sufficient to obtain a response from the Georgia Secretary of State.

Respectfully submitted,

BERGMAR LAW LLC

/s/ Nina Maja Bergmar

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**DELONG CALDWELL BRIDGERS
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Counsel for Plaintiffs

Certificate of Compliance

Pursuant to LR 7.1 D., NDGa, the undersigned counsel certifies that the within and foregoing motion was prepared using Times New Roman font at 14 point, one of the font and point selections approved by the Court in LR 5.1 C. (3), NDGa.

s/Charles R. Bridgers

Charles R. Bridgers

Ga. Bar No. 080791

Counsel for Plaintiffs

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Defendants	:	
	:	

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on the ____ day of August 2022 the caused a true and correct copy of the within and foregoing motion to be served on all parties of record by placing such copy in the US Mail with appropriate First Class postage attached thereto and addressed as follows:

1715 Northside Drive, Inc.
c/o Carmen Popovitch
1715 Northside Drive, NW
Atlanta, Georgia 30318

A-1 Entertainment, LLC
c/o Carmen Popovitch

1715 Northside Drive, NW
Atlanta, Georgia 30318

Veronica Enterprises, Inc.
c/o Carmen Popovitch
1271 Marietta Blvd., NW
Atlanta, Georgia 30318

1271 Marietta Blvd., LLC
c/o Carmen Popovitch
1271 Marietta Blvd., NW
Atlanta, Georgia 30318

**DELONG CALDWELL BRIDGERS
FITZPATRICK & BENJAMIN, LLC**

s/Charles R. Bridgers
Charles R. Bridgers
Ga. Bar No. 080791